

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

FEDERAL CONSTITUTIONAL COMMISSION
OFFICE OF THE SECRETARY

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**West Virginia Radio Corporation of Salem, Permittee of unbuilt Radio
Station WAJR-FM, Salem, WV.**

These Comments are made on behalf of these licensee corporations as well.

COMMENTS

***A. Agreements Involving Applications for Coordinated FM
Station Changes***

2. While WVRC recognizes that the allowance of any interference as between FM licensees, raises questions in the *public interest* and not just the interests of the affected licensees, permitting agreements that call for the mutual acceptance of interference from each other would also appear to be in the public interest where the end result is significant *gains* in coverage by each of the stations involved. With respect to the Commission's proposed limitations and conditions on granting applications filed pursuant to such agreements, WVRC comments as follows:

3. *Gain to Loss Ratios.* While a five-to-one ratio of gains vs losses in areas and populations would appear to be an acceptable standard, WVRC would ask that the Commission modify its proposed policy so that *area calculations* would exclude large bodies of water, such as the ocean or any of the Great Lakes, or when an area is unpopulated due to its designation as a federal national park, national forest, or wildlife refuge). Excluding such areas in the calculations would avoid the elimination of consideration of otherwise meritorious applications.

4. *Methods for Determining Amount of Interference.* Further, WVRC would oppose reference to contour overlap as the exclusive methodology for determining interference. As noted in the *NPRM*, the calculation of desired to undesired signal strength ratios is the only logical method by which interference can be computed.

5. *Contingent Applications:* In order to accommodate Applications filed pursuant to negotiated interference agreements, the Commission has proposed to permit the filing of contingent minor change FM construction applications on a limited

basis. The policy would require that such applications be filed on the same date, and that each include a copy of the agreement covering all related applications.² These related minor change applications would be processed and if grantable, granted simultaneously. The construction permits would be conditioned as necessary to allow an orderly implementation of non-interfering service.³

6. In general, WVRC supports the proposed exception to the contingent application rule.⁴ A relaxed policy would give licensees greater flexibility in the area of developing upgrade proposals for one or more stations in the context that, once filed, all of the applications would be considered cut-off and free from later filed mutually exclusive applications. While WVRC recognizes that there is a practical limit to the number of contingent applications in a group, it urges the Commission not to establish a numerical limit in advance. The increasing complexity and difficulty of obtaining mutual contingent agreement among an increasing number of licensees in an area would, in WVRC's opinion, establish practical limits to the size of the group without the need to set an arbitrary maximum number.

7. WVRC would note that the Commission may wish to consider whether or not additional information might be requested in support of a group of contingent applications in order to avoid needless expenditure of Commission energies and resources in processing a group doomed to failure. For example, the applicant might be required to provide some greater assurance that any new transmitter site specified in an application which would constitute a major environmental impact under the

²FM commercial minor change applications are "cut off" as of the date of filing, that is protected from later filed conflicting construction permit applications.

³Since the applications would, by definition, be mutually contingent on each other, if any application in the group could not be approved, all applications filed as an interrelated group would be dismissed.

⁴47 C.F.R. §73.3517.

Commission's rules, is, and will be suitable as well as available to the applicant.⁵ The Commission's stated desire in another proceeding to streamline a number of broadcast application forms by eliminating queries that call for non-standard answers or lengthy exhibits would seem to be in conflict with what is being proposed here.

B. Use of Alternate Propagation Model

8. WVRC strongly supports the use of a "Point-to-Point" contour prediction methodology, such as presented in "Technical Note 101" or as specifically proposed by the Commission in the *Appendix* to the *NPRM*.⁶ The State of West Virginia is very mountainous with extremely rugged terrain. Determining interference solely by the distance separation tables in §73.207, or the alternative method currently described in §73.215 of the rules creates a false picture of the degree of interference a proposed FM technical facility could cause. This serves no public interest benefit, and deprives the public of needed new service.

9. In the same light, WVRC believes that the same PTP methodology, if adopted, should also be available to applicants for general purposes of determining F(50,50) and F(50,10) contour distances, and not just interfering contours only. The same rationale would apply here, and would promote the public interest through the maximization of licensee facilities.

C. Revisions to 47 CFR §73.215

10. WVRC supports the Commission's proposes to revise the Section 73.215(e) spacing table to afford all FM commercial stations a minimum of 6 kilometers of relief from the applicable Section 73.207(a) standards. Adoption of such an

⁵Currently, the Commission assumes, in the absence of contrary evidence, that the applicant has obtained, or will be able to obtain, all necessary local approvals, such as zoning and building permits.

⁶WVRC is not in a position to evaluate the specific technical aspects of the Commission's PTP model, but endorses the PTP concept in general as a desirable methodology.

amendment would provide greater flexibility to stations in their attempts to identify and acquire suitable transmission sites, and would also relieve the Staff of having to evaluate waiver requests on a case-by-case basis.

11. The Commission may wish to consider however, in situations not involving negotiated interference agreements, whether an applicant who obtains a construction permit using §73.215(e) standards, for an otherwise short-spaced site under §73.207(a), should be required to address listener complaints of interference inside the short-spacing zone⁷ in the same manner it is now required to address blanketing contour interference complaints under existing rules.

***D. Extending First Come/First Served Processing to AM, NCE
FM and FM Translator Minor Change Applications***

12. WVRC supports the Commission's proposal to extend first come/first served processing standards to AM, NCE and FM translator minor change applications. Needless delay and artificial risk currently exists for such licenses in presently proposing what, in essence, are minor changes, as against FM minor change applicants who enjoy FC/FS processing and cut-off protection.

***E. Expanding the Definition of "Minor Change" to Include
Certain Facilities Changes Proposed by AM, NCE, and
FM Translator Stations***

13. WVRC agrees that AM power increases should be treated as minor change applications, and thus subject to FC/FS processing as discussed above and in paragraphs 46-47 of the *NPRM*. WVRC would also support the definition of Minor Change to include a community of license change proposed by an AM station. Such modifications to the Rules⁸ would bring about parity as between AM and FM stations,

⁷That is, the area of up to 6 km between the actual interfering contour and that established through the separation tables in §73.207(a).

⁸See *NPRM* ¶48, and accompanying notes.

which can now change its community of license through rule making without facing the spectre of a competing application or an auction proceeding.⁹

F. Coordinate Corrections by Single Application for Licensed Stations.

14. WVRC supports the Commission's proposal to allow Licensees to make minor (*i.e. less than 3 seconds of longitude and/or latitude*) coordinate corrections by the filing of a single application. The requirement of filing both a CP and then a License Application, whether or not simultaneously, is an enormous waste of time and resources for both the Commission and the affected Licensees. Unfortunately, this proposal should have been made and adopted several years ago, when the Commission was the recipient of many minor coordinate correction applications due to implementation of the tower registration program.

15. Nevertheless, there will likely continue to exist situations where minor coordinate corrections will need to be made outside the context of a pending CP application that could be amended. This could easily occur at the licensing stage of a new transmitter site: a tower is erected slightly off from the coordinates contained in the CP. To require the filing of a CP modification application on Form 301 rather than simply noting the minor correction on the 302-AM or 302-FM license application, is unnecessary and burdensome.¹⁰

16. It should be pointed out, however, that in situations where the allocation is extremely tight, such as the Northeast, a "minor coordinate correction" could actually make a station short-spaced where it was not before. In such cases, the Commission must determine whether the station is then to be considered

⁹*Id.*

¹⁰Naturally, such corrections, in any case, would need to be coordinated with the FAA, and the tower registration database amended.

“grandfathered” under §73.207, and a note of its special status placed in the comment section of the tower database.

Conclusion

17. For the reasons presented above, WVRC supports the changes proposed by the Commission as noted herein, and urges the Commission to adopt them and amend its rules as necessary forthwith.

Respectfully submitted,

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